

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE NO. [BILL NUMBER]

Privacy Expectation Afterlife and Choices Act.

Sponsored by: HDraft Committee

A BILL

for

1 AN ACT relating to decedents' estates; authorizing a
2 probate court to order disclosure of electronic records or
3 contents of a deceased user's electronic account;
4 specifying procedures; authorizing fees; providing
5 exceptions; providing exemption from liability as
6 specified; providing definitions; and providing for an
7 effective date.

8

9 *Be It Enacted by the Legislature of the State of Wyoming:*

10

11 **Section 1.** W.S. 2-3-1001 through 2-3-1006 are created
12 to read:

13

1 ARTICLE 10

2 PRIVACY EXPECTATION AFTERLIFE AND CHOICES ACT

3

4 **2-3-1001. Privacy Expectation Afterlife and Choices**
5 **Act; short title.**

6

7 This act shall be known and may be cited as the "Privacy
8 Expectation Afterlife and Choices Act".

9

10 **2-3-1002. Definitions.**

11

12 (a) As used in this act:

13

14 (i) "Asset" means anything of financial value
15 that is part of the estate of the decedent;

16

17 (ii) "Authorized user" or "user" means a person
18 or entity who has lawfully obtained credentials to access
19 an account with an electronic communication service in a
20 manner consistent with the terms of service that apply to
21 that account;

22

1 (iii) "Contents" means information concerning the
2 substance, purport or meaning of communications and
3 includes the subject line of the communication;

4
5 (iv) "Electronic communication" means a transfer
6 of signs, signals, writing, images, sounds, data or
7 intelligence of any nature that is transmitted, in whole or
8 in part, by a wire, radio, electromagnetic or photooptical
9 system that affects interstate or foreign commerce.

10 "Electronic communication" does not include any of the
11 following:

12
13 (A) Wire or oral communication;

14
15 (B) Communication made through a tone-only
16 paging device;

17
18 (C) Communication from a tracking device;

19
20 (D) Electronic funds transfer information
21 stored by a financial institution in a communication system
22 used for the electronic storage and transfer of funds.

1

2 (v) "Electronic communication service" means a
3 service that provides to users the ability to send or
4 receive wire or electronic communication;

5

6 (vi) "Electronic communications system" means a
7 wire, radio, electromagnetic, photooptical or
8 photoelectronic facility that provides for the transmission
9 of wire or electronic communications and any computer
10 facilities or related electronic equipment that provides
11 for the electronic storage of those communications;

12

13 (vii) "Provider" means an electronic
14 communication service or remote computing service;

15

16 (viii) "Record" means a record regarding a
17 communication sent or received by a subscriber or user of
18 an electronic communication service or remote computing
19 service, including but not limited to, account logs that
20 record account usage, cell-site data for mobile
21 telecommunications calls and online addresses of other
22 individuals with whom the account holder has communicated;

23

1 (ix) "Remote computing service" means providing
2 computer storage or processing services to the public by
3 means of an electronic communications system;

4
5 (x) "This act" means W.S. 2-3-1001 through 2-3-
6 1006.

7
8 **2-3-1003. Power granted to personal representative.**

9
10 (a) A court that has jurisdiction of the estate of a
11 deceased user may order a provider to disclose to the
12 personal representative of the estate a record or other
13 information pertaining to the account of the deceased user
14 that is in electronic storage with the provider, but not
15 the contents of communications or stored contents, if the
16 court makes all of the following findings of facts based
17 upon a sworn declaration of the personal representative or
18 other admissible evidence:

19
20 (i) The user is deceased;

21
22 (ii) The deceased user was the subscriber to or
23 customer of the provider;

1

2 (iii) The account belonging to the deceased user
3 has been identified with specificity, including a unique
4 identifier assigned by the provider;

5

6 (iv) There are no other owners of, or persons or
7 entities who have registered with the provider with respect
8 to, the deceased user's account;

9

10 (v) Disclosure is not in violation of another
11 applicable federal or state law;

12

13 (vi) A request for disclosure has been made by
14 the personal representative and is narrowly tailored to the
15 purpose of administering the estate;

16

17 (vii) The personal representative demonstrates a
18 good faith belief that the information requested is
19 relevant to resolve issues regarding assets or liabilities
20 of the estate;

21

22 (viii) The request seeks information spanning no
23 more than eighteen (18) months prior to the deceased user's

1 date of death or the personal representative has made a
2 request for information that specifically requests data
3 older than eighteen (18) months prior to the date of death;
4

5 (ix) The request is not in conflict with the
6 deceased user's will or other written, electronic or oral
7 expression of the deceased user's intent regarding access
8 to or disposition of information contained in or regarding
9 the user's account.

10
11 (b) A court that has jurisdiction of the estate of a
12 deceased user may order a provider to disclose to the
13 personal representative of the estate the contents of
14 communications or stored contents, if the court makes all
15 of the following findings of facts based upon a sworn
16 declaration of the personal representative or other
17 admissible evidence:

18
19 (i) The will of the deceased user, a choice made
20 by the deceased user within the product or service or
21 otherwise regarding how the user's contents can be treated
22 after a set period of inactivity after the user's death or

1 other event evidences the deceased user's express consent
2 to the disclosure of the requested contents;

3
4 (ii) The findings required by paragraphs (i)
5 through (viii) of subsection (a) of this section.

6
7 (c) Except as provided in subsection (d) of this
8 section, a provider shall disclose to the personal
9 representative of the estate the contents of the deceased
10 user's account, to the extent reasonably available, only if
11 the personal representative gives the provider all of the
12 following:

13
14 (i) A written request for the contents of the
15 deceased user's account;

16
17 (ii) A copy of the death certificate of the
18 deceased user;

19
20 (iii) An order of the court with jurisdiction
21 over the estate of the deceased user that includes all of
22 the findings required in subsection (b) of this section;

1 (iv) An order that the estate shall first
2 indemnify the provider from any and all liability in
3 complying with the order.

4
5 (d) A provider served with an order compelling
6 disclosure of a deceased user's records or contents
7 pursuant to this section may seek to quash or modify the
8 order within a reasonable time after receiving the order.
9 The court may enforce the order or do any of the following:

10
11 (i) Modify the order to the extent that the court
12 finds that compliance with the order would cause an undue
13 burden on the provider or quash the order if the court
14 finds that the order cannot be modified so as to avoid the
15 undue burden. Any costs demanded pursuant to subsection (e)
16 of this section shall not be considered when a court is
17 making a determination whether the request constitutes an
18 undue burden;

19
20 (ii) Quash the order if any of the applicable
21 requirements of subsections (a) or (b) of this section are
22 not met;

1 (iii) Quash the order if the court finds, based
2 upon the preponderance of the evidence submitted by the
3 provider or any other person, that any of the circumstances
4 set forth in W.S. 2-3-1004 apply.

5
6 (e) A provider may require a requesting personal
7 representative to pay the direct costs of producing a copy
8 of the record or other information pertaining to the
9 account of the deceased user, when those records are not
10 already available for production in the ordinary course of
11 business.

12
13 **2-3-1004. Exceptions.**

14
15 (a) Notwithstanding 2-3-1003, a provider shall not be
16 compelled to disclose a record or the contents of
17 communications if any of the following apply:

18
19 (i) The deceased user expressed an intent to
20 disallow disclosure through either deletion of the records
21 or contents during the user's lifetime or an affirmative
22 indication, through a setting within the product or
23 service, of how the user's records or the content of

1 communications should be treated after a set period of
2 inactivity or other event;

3
4 (ii) The provider is aware of any indication of
5 lawful access to the account after the date of the deceased
6 user's death or that the account is not that of the
7 deceased user;

8
9 (iii) Disclosure would violate other applicable
10 law.

11
12 **2-3-1005. Disclosure and control.**

13
14 (a) Disclosure of the contents of the deceased user's
15 account to the personal representative of the estate shall
16 be subject to the same license, restrictions, terms of
17 service and legal obligations, including copyright law,
18 that applied to the deceased user.

19
20 (b) Nothing in this act shall be construed to require
21 a requesting party to assume control of a deceased user's
22 account.

1 **2-3-1006. Immunity for compliance in good faith.**

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3 A provider shall not be held liable for compliance in good
4 faith with a court order issued pursuant to this act.

5

6 **Section 2.** This act is effective July 1, 2016.

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9 **STAFF COMMENT**

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11 Task Force may wish to specify applicability of PEAC Act.
12 Does PEAC Act apply only to situations in which death was
13 after the effective date of the act or does PEAC apply
14 regardless of date of death?

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17

(END)